

I entertain no possible doubt that subsection (10)(a) is solely directed to the erection of a new building whereas the genesis and purpose of subsection (10)(b) is failure to comply with an approved plan or specification of an already existing building. An anomalous situation would arise if subsection (10)(a) is applicable to the facts of the present case. Let me give an illustration: Mr. A is the owner of a building which is built on Mr. B's land. The former applied to the appropriate authority for an extension of his present building e.g., to build an extra bedroom. He put in his plan and it was approved. He deviated from that approved plan without written permission and instead put up two extra bedrooms. What is the appropriate charge? Commencing building operations in contravention of subsection (7) which is punishable under section 144(10)(a), or deviation from an approved plan without written permission under section 144(10)(b)? The answer must be the latter subsection. Will he or the owner of the land be charged for "deviation?" I think common sense and justice dictate that Mr. A would be the proper person to be charged and therefore in such a case as the present, it must be decided without reference to the provisions of subsection (10)(a).

I am of the opinion that the points raised for the appellant fail and that the appeal must be dismissed.

Appeal dismissed.

Solicitors: *Sault, Keith Sellar & Co.*

NANYANG DEVELOPMENT (1966) SENDIRIAN BERHAD v. HOW SWEE POH

[O.C.J. (Raja Azlan Shah J.) March 11, 1967]

[K.L. — Originating Motion No. 1 of 1969]

Practice and Procedure — Application to court — Act not specifying form of — Whether originating motion correct procedure.

Land Laws — Caveat — Application to remove — Application by Originating Motion — Whether right declared in s. 326 of the National Land Code, 1965, is preliminary to that conferred by s. 327.

This was an application by way of originating motion to remove a caveat pursuant to section 327(1) of the National Land Code. On a preliminary objection by the respondent it was argued (1) that the procedure by originating motion adopted was irregular and misconceived; (2) that the application was premature as the preliminary step stipulated in section 326 of the National Land Code should be taken before making the application under section 327(1) of the Code.

Held: (1) where an Act of Parliament does not specify in what form an application may be made to court, the application may as a matter of procedure

A be made in any form in which the court can be moved and therefore the procedure by originating motion in this case was correct;

(2) the provisions of sections 325, 326 and 327 of the National Land Code provide three different avenues to different sets of people to remove a caveat and the right declared by section 326 is not a preliminary to that conferred by section 327.

B *Cases referred to:—*

(1) *Lim Kiat Moy v. Hamzah* [1966] 2 M.L.J. 175.

(2) *In re Meister, Lucius and Bruning* [1914] W.N. 390.

ORIGINATING SUMMONS.

C *Wong Soon Foh* for the applicants.

Eugene Lye for the respondents.

Cur. Adv. Vult.

D **Raja Azlan Shah J.:** The applicant is the registered proprietor of 19 pieces of land (hereinafter referred to as the "said lands"). On or about the 10th January 1969 the respondent presented a Caveat, Presentation No. 287, Vol. XLI Folio 113 (hereinafter referred to as "the Caveat") against the said lands. The applicant applies by way of originating motion to remove the said caveat pursuant to section 327(1) of the National Land Code, 1965.

E Mr. Eugene Lye for the respondent raised a preliminary objection. First, he says that the originating motion is irregular and misconceived. He contends that the provisions of the National Land Code are silent as to the procedure to be adopted in removing a caveat. He says that in such a case the procedure specified in the F.M.S. Land Code (Cap. 138) must be followed, that is, by way of originating summons. He cites sections 441 and 447(1) of the National Land Code and the case of *Lim Kiat Moy v. Hamzah*.⁽¹⁾

G The second limb of this argument is centred on the provisions of sections 326 and 327 of the Code. He says that the present application under section 327(1) of the National Land Code is premature. It is his contention that the preliminary step stipulated by section 326 should first be taken before embarking on the present application under section 327(1).

H Mr. Wong Soon Foh, on behalf of the applicants contends that it is not irregular to initiate proceedings by way of originating motion. He relies on a passage in 1963 *Annual Practice* on page 1268:—

I "Where a statute provides for an application to the court without specifying the form in which it is to be made, and the rules do not expressly provide for any special procedure, such application may usually be made by originating motion."

He answers Mr. Eugene Lye's second limb by saying that any person in the position of the applicants has an option to initiate proceedings

either in pursuance of section 326 or 327 of the National Land Code.

I agree with the proposition that in such a case as the present where an Act of Parliament does not expressly specify in what form an application may be made to the court, as a matter of procedure it may be made in any form in which the court can be moved. There is no question that the court can be moved by originating motion. The passage relied on by Mr. Wong Soon Foh is taken from the judgment of Warrington J. in *In re Meister, Lucius and Bruning*,⁽²⁾ in which the learned judge held that in Chancery cases the procedure usually adopted, where an Act of Parliament is silent as to the form an application might be made to the court, is by originating motion: In *Lim Kiat Moy v. Hamzah, supra*, I did not make a ruling that an application to remove a caveat must be by originating motion. No doubt that case was proceeded by originating summons but the validity of the procedure was never considered. It cannot therefore be said that that case creates a precedent on procedure.

It is not in doubt that the F.M.S. Land Code (Cap. 138) made no provision whatever for the necessary procedure to present a caveat. Part 19 of the National Land Code has remedied these omissions. Besides providing in detail for the incidents and effects of four distinct types of caveat — the Registrar's, the private, the lienholder's and the trust caveat, it makes detailed provisions for the procedure to remove a caveat. In respect of a private caveat, the National Land Code provides three different avenues to different sets of people to remove a caveat. Section 325 declares that a private caveat may be withdrawn on the application of the person or body at whose instance it was entered. It further specifies the administrative steps to be taken by the Registrar to cancel a caveat. Section 326 enables the caveatee to remove a caveat on application to the Registrar who is obliged to take certain administrative steps to effect its removal. Any person aggrieved by the Registrar's decision has a right of appeal to this court (section 418). Section 327 gives power to the court to order the removal of a caveat on the application of the party aggrieved by the existence of such caveat and it also enumerates certain administrative steps to be taken by the Registrar to effect its removal. From such decisions there is a right of appeal to the Federal Court.

It is therefore manifest that the three sections confer collateral rights to the different classes of persons for whose benefit they are designed. In my view it is fallacious to say that the right declared in section 326 is preliminary to that conferred by section 327.

For the above reasons, I overrule the preliminary objection.

Objection over-ruled.

Solicitors: Chooi & Co.; Eugene Lye & Co.

SUKUMARAN v. BUILDING CONSTRUCTION CO. (MALAYA) LTD.

[O.C.J. (Abdul Aziz J.) March 12, 1969]

[K.L. — Civil Suit No. 738 of 1966]

Negligence — Contributory negligence — Piling works — Surveyor standing in vicinity of boring machine — Struck by piping.

Damages — Loss of future earnings — 37 year old surveyor — Fracture of right tibia & fibula — Fracture of femur, scapula and ribs.

Damages — Leg — 1" shortening.

The plaintiff was employed by the defendants, a firm of building contractors, as a surveyor. He was struck by a piece of piping which fell from a boring machine. The plaintiff was not doing any survey work at the time of the accident. The defendants, while admitting negligence, alleged contributory negligence on the part of the plaintiff. In an action for damages arising from the accident,

Held: a prudent man who was not engaged in performing the work that he was employed to do would not stand where the plaintiff had stood at the time of the accident. By being in the danger area, he must be assumed to be aware of the risk, and had therefore contributed 50% towards the injuries that he suffered.

F CIVIL SUIT.

H.E. Cashin for the plaintiff.

P.J. Mooney for the defendants.

Abdul Aziz J. (delivering oral judgment): This action for damages arose from an accident which occurred during the construction of the National Electricity Board Headquarters at Pantai Valley wherein the plaintiff suffered multiple injuries as a result of being struck by a piece of piping which fell off from a boring machine used by the defendant firm for piling work. The defendant, whilst admitting negligence on their own part, alleged contributory negligence on the part of the plaintiff also. The question for decision is, therefore, to what extent did the plaintiff contribute to his own injuries and what reasonable amount should in the circumstances be given for general damages.

The evidence disclosed that on the day in question two huge machines: one a boring machine and the other a piling machine, were in operation preparing the foundation of the building. With these two machines working simultaneously, it was suggested — and it is not difficult to imagine — that dangers to life and limbs were likely to emanate from the mov-